

PR#9833

PARRISH, DANIEL

1/14/2008

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.
W.A. DREW EDMONDSON, in his capacity as
ATTORNEY GENERAL OF THE STATE OF
OKLAHOMA, and OKLAHOMA SECRETARY
OF THE ENVIRONMENT C. MILES TOLBERT,
in his capacity as the TRUSTEE FOR NATURAL
RESOURCES FOR THE STATE OF OKLAHOMA,

Plaintiffs,

vs.

No. 05-CV-0329 GFK-SAJ

TYSON FOODS, INC., TYSON POULTRY, INC.,

TYSON CHICKEN, INC., COBB-VANTRESS, INC.,
AVIAGEN, INC., CAL-MAINE FOODS, INC.,
CAL-MAINE FARMS, INC., CARGILL, INC.,
CARGILL TURKEY PRODUCTION, LLC,
GEORGE'S, INC., GEORGE'S FARMS, INC.,
PETERSON FARMS, INC., SIMMONS FOODS, INC.,
and WILLOW BROOK FOODS, INC.,

Defendants.

VIDEO DEPOSITION OF DANIEL JOSEPH PARRISH

TAKEN ON BEHALF OF THE DEFENDANTS

ON JANUARY 14, 2008, BEGINNING AT 9:37 A.M.

IN OKLAHOMA CITY, OKLAHOMA

Videographer: Stephanie Britton

Reported by: Lana L. Phillips, CSR, RPR

Exhibit 8

1 Agency, and has a number of times.

2 Q All right. Could you provide a
3 brief overview of the program to which the land
4 application of poultry litter is controlled in
5 the state of Oklahoma?

6 A A brief overview of poultry waste
7 application would be that anybody who applies
8 poultry waste are required to have a poultry
9 waste applicator's license with the Oklahoma
10 Department of Agriculture, Food, and Forestry, by
11 law. Then when they submit their document to us
12 for a license, then they are required to adhere
13 to the Poultry Feeding Operations Act, poultry
14 permanent rules, and the Poultry Waste
15 Applicators Act and rules.

16 And there's numbers of things
17 involved in that, if you want me to go on.

18 Q We'll go into them in detail.
19 That's what I wanted, was just the basic
20 framework.

21 So everyone who land-applies poultry
22 litter has to be registered -- and would it be
23 appropriate to say licensed through your
24 division?

25 A Everyone who land-applies poultry

1 waste by law is required to receive a poultry
2 license from the Oklahoma Department of
3 Agriculture, Food, and Forestry.

4 Q All right. And there are rules and
5 -- there are rules in effect in Oklahoma that
6 dictate where, when, and how poultry litter can
7 be land-applied also; correct?

8 A Yes.

9 Q And your division is responsible for
10 oversight of the -- of those rules and their
11 implementation; correct?

12 A The AEMS division at the Department
13 of Agriculture is responsible for oversight, but
14 clearly do not have enough staff and budget to
15 even begin to oversight what we need to.

16 Q Your division has field inspectors;
17 correct?

18 A Yes.

19 Q Now, what are the primary objectives
20 of the litter utilization program that your
21 division administers?

22 A The primary objectives are, by law,
23 to ensure that poultry waste is applied at
24 agronomic rates, applied so that the crop that is
25 on the field where it's applied to can uptake the

1 nutrients from the waste.

2 There's numbers of other documents
3 that are required to be submitted. And at this
4 stage, I'll stop, and I'm assuming we'll get into
5 those -- unless you want me to go further.

6 Q Is one of the objectives of the
7 regulatory program over poultry litter to protect
8 the state of Oklahoma's waters?

9 A Yes.

10 Q Is one of the objectives of the
11 program regulating utilization of poultry litter
12 in Oklahoma to protect the environment?

13 A Yes.

14 And by law, it's called "poultry
15 waste." Not to disagree with you, but it's
16 called "poultry waste," so I'll refer to it as
17 "poultry waste." I'm assuming when you're saying
18 "litter," we're talking about one and the same.

19 Q All right. Fair enough. If I use
20 the term "poultry waste," then we'll assume that
21 I'm referring to the term as defined in the
22 statute and the regulations that your division
23 administers.

24 Would that avoid any confusion?

25 A Yes. And in the law it refers to

1 Q All right. "Integrator" is also a
2 defined term in the Act; correct?

3 Let's look at 10-9.1.B.13, please.

4 A Yes.

5 Q Sir, would you kindly read the
6 statutory definition of the term "integrator"?

7 A The document that you gave me of the
8 Oklahoma Registered Poultry Feeding Operations
9 Act, 10-9.1.B.13, "'Integrator" means an entity
10 which unites the elements associated with the
11 poultry industry, including but not limited to
12 hatching, feeding, processing, and marketing. It
13 includes but is not limited to situations when
14 growing is contracted out to others and when the
15 integrator operates its own growing facilities."

16 Q All right. Thank you.

17 Are you aware of circumstances, sir,
18 in Oklahoma where an integrator is also a
19 registrant or the registered owner or operator of
20 a poultry feeding operation?

21 A Yes. There are circumstances in our
22 records that have been submitted to the AEMS
23 division that are that way, where integrators are
24 listed as owner and/or operator.

25 Q And in your experience, does that --

1 what does that mean in practical terms? Does
2 that mean the integrator owns and operates the
3 poultry farm?

4 A Based upon the records that have
5 been submitted to us, with page 3 being an oath
6 page that they have to have notarized, that is
7 the way it's submitted to us, that the integrator
8 is the owner and/or operator.

9 Q All right. That circumstance you
10 just described, that is separate and distinct
11 from a situation where the farm is owned and
12 operated by a contract poultry grower; right?

13 A I wouldn't define it as separate and
14 distinct. We treat it the same as we would any
15 Oklahoma registered poultry feeding operation.

16 To say it's distinct, it may be
17 distinct from the poultry company's standpoint;
18 but from the Department of Agriculture
19 standpoint, it's not distinct.

20 Q All right. I understand your
21 answer. You're saying you regulate them and
22 treat them the same.

23 Is that what your answer meant, sir?
24 I mean, from a regulatory standpoint, you don't
25 see a difference?

1 A My answer is -- I'm not disagreeing
2 with your words, but I would like to put them in
3 my own words.

4 My answer is the AEMS division sees
5 no distinction between whether they're owned by a
6 integrator or whether they're owned by a contract
7 operation. Our rules and regulations refer to
8 registered poultry feeding operations.

9 Q I understand. The set of rules
10 applies equally to both sets of circumstances.

11 That's what you're telling me?

12 A Yes. That is correct.

13 Q All right. My question was not from
14 a regulatory standpoint. It was sort of a
15 practical standpoint. You have one feeding
16 operation owned and operated by a contract
17 grower, is one real world situation, versus a
18 separate farm that is owned and operated by an
19 integrator.

20 In the real world, those are
21 distinct situations, but in your division's eyes
22 you regulate them both under the same sets of
23 rules; correct?

24 MR. GARREN: Object as to form.

25 THE WITNESS: I would assume from

1 furnishing the birds and the feed and most all of
2 them to those contract operations. Two, we send
3 copies of our compliance letters to the
4 integrating company when there are compliance
5 letters.

6 So it would be for both. One, so we
7 could also change the -- who we're sending the
8 letters to; and two, so we could know who's
9 furnishing the birds and feed to the contract
10 growers.

11 Q You said -- in your answer, you
12 referred to a compliance letter.

13 Can you tell me what you mean by
14 that?

15 A Oh, there are numerous things. Any
16 matter that we are able to find either by
17 inspections or by submittals to our office, of
18 where we believe they may not be in compliance to
19 the law, then we can send letters to them to
20 require corrective actions and/or submit it to
21 the office of general counsel to go a step
22 further and do fines.

23 Q All right. In a case where a
24 contract poultry grower is the owner/operator of
25 the registered feeding operation, if the

1 compliance issue relates to the operation of that
2 farm, do you send the compliance letter to that
3 contract poultry grower and then send a copy to
4 the integrator? What's the procedure that you
5 use?

6 A Yes, that is correct. The letter
7 for compliance issues of when a contract grower
8 is the one that's listed as the owner of the
9 facility, the compliance letter is sent to him,
10 with a copy of it sent to the integrating company
11 that is listed in our files that have been
12 submitted by the owner of the poultry operation.

13 Q And if the -- if the situation
14 you're presented with involves the management of
15 poultry waste at the site of the feeding
16 operation and that's what the compliance issue
17 relates to, the violation, so to speak, is the
18 violation of the owner/operator of the facility.

19 That's who you're looking to, to
20 correct the noncompliance situation; correct?

21 A The answer is that's who the letter
22 is addressed.

23 But the reason why we also send a
24 copy to the integrating company is the
25 integrating company furnishes the birds and the

1 feed; and if there is a problem with waste, waste
2 is generated from the bird that's furnished by
3 the company -- that puts out the manure or the
4 waste.

5 So that's why a copy is sent to the
6 integrating company also.

7 Q Is -- if a contract poultry grower
8 fails to come into compliance when so demanded by
9 your division, is the integrator required to stop
10 delivering flocks of birds to that contract
11 poultry grower?

12 A There are some matters in the
13 Oklahoma Registered Poultry Feeding Operations
14 Act where that is the case. That deals with
15 education from a standpoint of application that
16 we're referring to of poultry waste.

17 The answer is no, but we have made
18 phone calls or sent letters asking for assistance
19 in that area that you're referring to.

20 Q And in your experience, when your
21 division has made that request of an integrator,
22 have you received cooperation from the
23 integrator?

24 A Some integrators we have; some
25 integrators we have not.

1 Well, Section 35 -- or Title 35,
2 Section 17-5-1, is titled Purpose; correct?

3 A Yes.

4 Q All right. It says: "These rules
5 shall serve to control nonpoint source runoff and
6 discharges from poultry waste application of
7 poultry feeding operations. The rules allow for
8 the monitoring of poultry waste application to
9 land or removal from these operations and assist
10 in ensuring beneficial use of poultry waste while
11 preventing adverse effects to the waters of the
12 state of Oklahoma." Period.

13 You agree with that statement, sir,
14 that I just read?

15 A Yes. That statement is the Purpose
16 of 35:17-5-1.

17 Q All right. So these rules
18 applicable to these poultry growers serve to,
19 one, control nonpoint source runoff from -- of
20 poultry waste.

21 Agreed?

22 A Yes.

23 Q Two, they ensure the beneficial use
24 of poultry waste while preventing adverse
25 effects.

1 infiltration through a sinkhole or at a well?

2 A Yes. And by sticking to the hundred
3 feet of a perennial stream, pond, well, or
4 sinkhole, it would -- by sticking to that and
5 not applying manure, it would help reduce the
6 problem of what you just referred to.

7 Q I mean, don't we need to -- don't we
8 need to acknowledge that there is virtually no
9 way to set up a zero loss scenario in
10 agriculture?

11 A It would be especially challenging
12 in Eastern Oklahoma, where there are lots of
13 rocks and lots of hills and lots of other
14 problems. It would be very challenging.

15 Q All right. The next bullet point:
16 "To areas within 50 feet of an intermittent
17 stream, unless an established buffer strip is
18 present." It says: "The width of the buffer
19 strip will be used as a setback distance for
20 application purposes. The buffer strip must meet
21 the requirements for design and maintenance
22 established in the appropriate NRCS buffer
23 standard and specification."

24 All right. Help me understand. In
25 practical terms, what does that mean?

1 Plus two more sentences are there,
2 about wetness, and mentions highly vulnerable
3 groundwater again.

4 Q Okay. So for Mr. Saunders, I have
5 -- in this animal waste management plan, I have
6 some criteria that address all of my fields, that
7 address areas near streams, ponds, water wells,
8 and I have criteria here that address my steep
9 sloping land, and to address my land that is
10 seasonally wet.

11 I have something to refer to in this
12 plan, as far as telling me how to handle my
13 poultry waste related to those lands; correct?

14 A That is correct.

15 But it's only based upon this animal
16 waste management plan document. There are more
17 regulations than just the plan.

18 Q Under the statutory program, as well
19 as the plan, the registered poultry feeding
20 operators are required to maintain records of the
21 disposition of the poultry waste generated on
22 their farms; correct?

23 A Yes.

24 Q And if they land-apply it on their
25 own land, they're supposed to record that;

1 A These plans provide guidance of how
2 they should use their poultry waste, and then
3 there are other guidance they should also refer
4 to besides these plans.

5 Q But you agree that trained
6 authorized personnel either for -- working for
7 NRCS or working for ODAFF, have prepared a
8 document that specifically tells them what the
9 allowable rate of litter application is on any
10 field upon which they intend to use poultry
11 waste?

12 You agree?

13 A These documents tell that poultry
14 operation the guidelines they should use in
15 applying their waste. But just as me with my
16 driver's license, it doesn't give me everything
17 that I am required to do when I'm driving my car.

18 Q But you expect poultry growers to
19 follow these animal waste management plans?

20 That's what the law says, doesn't
21 it?

22 A Follow those waste management plans,
23 to follow the Oklahoma water quality standards.
24 I can give you a whole list of things that they
25 have to -- in addition to that, that they have to

1 adhere to, just as I have to do with my driver's
2 license.

3 Q Now, the regulated persons who are
4 required to have animal waste management plans,
5 those are the owners and operators of the
6 registered feeding operations; correct?

7 A The law requires that the owners of
8 a Oklahoma registered poultry feeding operation
9 have an animal waste management plan or proof
10 that they've applied for an animal waste
11 management plan.

12 Q Has ODAFF ever required a poultry
13 integrator to obtain an animal waste management
14 plan?

15 A Yes.

16 Q Has ODAFF ever required a poultry
17 integrator to obtain an animal waste management
18 plan in the Illinois River watershed?

19 A I don't have memorized anybody
20 that's a registered poultry operation in the
21 Illinois River watershed would have to get that
22 plan -- whether there are poultry integrators who
23 have operations owned by them in the Illinois
24 River watershed, I don't have that list
25 memorized.

1 scope of your group would include complaints
2 related to the use of poultry litter; correct?

3 A Yes.

4 Q Now, I think you covered this to a
5 certain degree when we were talking about the
6 water well hypothetical.

7 But if a registered poultry feeding
8 operator is violating the Act, what steps are
9 available to you and ODAFF to take corrective
10 action?

11 A When it is determined by our
12 assessment that they are in violation of the law,
13 then we can take actions, including corrective
14 actions, including fines. Those are our general
15 that we can do.

16 However, we have four and a half --
17 "half" because that person is a half CAFO, half
18 poultry -- four and a half inspectors to inspect
19 and investigate, for many registered poultry
20 operations, anything dealing with poultry,
21 whether it's applicators. And we do not begin to
22 have enough staff or enough budget to even begin
23 to enforce the rules and the regulations.

24 Q All right. Well, I'm -- I have to
25 move to strike that last part of your answer, as

1 operator in the Illinois River watershed who is
2 currently operating in violation of his or her
3 animal waste management plan?

4 If you can answer it yes or no, I
5 request that you do so.

6 MR. GARREN: Same objection.

7 THE WITNESS: I cannot answer it yes
8 or no.

9 Q (BY MR. McDANIEL) You can't tell me
10 what you're aware of?

11 A I can't answer if anyone is in
12 violation of our laws and rules, because I'm not
13 out to every operation every day, nor is our
14 staff out to every operation every day.

15 There's not enough state troopers to
16 pick up everybody that's speeding on the roads.

17 Q I understand that point, sir, and
18 it's been made multiple times by you.

19 My question is: Are you aware of
20 any operator -- poultry operator in the watershed
21 that is currently in violation of their plan?

22 A I am not aware of any today. But
23 that answer can only be said by saying that we do
24 not have enough staff to be able to determine
25 that on a daily, hourly basis.